IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.248 of 2005

Date of Decision: 24.10.2006

Mewa Singh and another .....Petitioners

Versus

State of Punjab and others .....Respondents

**CORAM:- HON'BLE MR.JUSTICE J. S. KHEHAR**
**HON'BLE MR.JUSTICE S. D. ANAND**

Present: Mr.Gurcharan Dass, Advocate
for the petitioners.

Mr.BS Chahal, AAG Punjab for respondents 1 to 3.

Mr.GS Punia, Advocate for respondent No.5.

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J.S.KHEHAR, J. (Oral)

The petitioners are Senior Assistants working in the Office of Deputy Commissioner, Ludhiana. The seniority of the members of the cadre of petitioners i.e. Senior Assistants was drawn by the authorities on 4.5.2000. It is not the matter of dispute that the instant seniority list, which has been placed on file as Annexure P4, is the final seniority list.

Respondent No.4 – Dalbir Bhardwaj moved a representation dated 1.8.2001 claiming promotion to the cadre of Senior Assistants with effect from a date when one of his Juniors, namely Ajit Singh Gill (respondent No.5), was promoted as such. The representation of respondent No.4 – Dalbir Bhardwaj was declined by Deputy Commissioner, Ludhiana vide his order dated 24.10.2002. Dissatisfied with the order dated

24.10.2002, respondent No.4 preferred an appeal before the Commissioner, Patiala Division, Patiala. The appeal preferred by respondent No.4 was accepted by the Commissioner, Patiala Division, Patiala by an order dated 24.3.2004/5.4.2004 (Annexure P8). A perusal of the order passed by the Commissioner, Patiala Division, Patiala reveals that respondent No.4 was held to be entitled to promotion to the cadre of Senior Assistant w.e.f. 31.10.1988.

Consequent upon the aforesaid determination at the hands of the Commissioner, Patiala Division, Patiala, the respondents re-framed the seniority list dated 4.5.2000 (Annexure P4) by superseding the same by a seniority list dated 21.6.2004 (Annexure P9). In the instant seniority list, respondent No.4 was placed at a position above the petitioners, whereas in the earlier seniority list dated 4.5.2000, the name of respondent No.4 was at a position lower than the one assigned to the petitioners.

The action of the respondents in unilaterally altering the erstwhile seniority list dated 4.5.2000, without following the rules of natural justice, is subject matter of challenge at the hands of the petitioners. It is the pointed contention of the learned counsel for the petitioners, that civil rights of the petitioners vested in them, through the seniority list dated 4.5.2000, had been altered to their detriment, without either issuing them a notice depicting the reasons for changing the position earlier assigning to them in the seniority list, or an opportunity of hearing so as to enable them to project their stand before the Authorities.

Having examined the facts and circumstances as have been noticed hereinabove, we are satisfied that it was imperative for the respondents to first issue a notice to the petitioners depicting the reasons for

altering the erstwhile seniority list dated 4.5.2000, and then to afford them an opportunity of hearing to project their case/position. Since the aforesaid has not been done, we are satisfied that the seniority list dated 21.6.2004 (Annexure P9) deserves to be set aside, merely for the reason, that the rules of natural justice, were not followed when the same was framed. The seniority list dated 21.6.2004 is accordingly set aside. It will be open to the respondents, to pass a fresh order in accordance with law. It will be open to the petitioners, to demonstrate, inter-alia, any legal infirmity in the order passed by the Commissioner, Patiala Division, Patiala dated 24.3.2004/5.4.2004 (Annexure P8).

Since respondents No.4 and 5 were promoted to the next higher post of Superintendent, Grade-II by an order dated 22/23.9.2004 (Annexure P13), we find no justification, as of now, to set the same aside. The aforesaid order shall obviously be subject to the determination of the final seniority list after hearing all concerned parties, including the petitioners and respondents No.4 and 5. Since, we have not set aside the promotion already granted to respondents No.4 and 5, we consider it just and appropriate to direct the authorities, to take a final decision on the issue of seniority of the petitioner, on the one hand, and respondent No.4, on the other, within three months from the date of receipt of a copy of this order.

Disposed of in the aforesaid terms.

( J. S. KHEHAR )
JUDGE

( S. D. ANAND )
JUDGE

October 24, 2006
SRM